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ROBERT VACCARI and JAKE ADAMS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JONATHAN WAYNE BOTTEN, SR.;
12 TANJA DUDEK-BOTTEN;
13 ANNABELLE BOTTEN; and J.B., a
minor by and through his guardian
14 JONATHAN WAYNE BOTTEN, SR.,

15 Plaintiffs,
vs.

16 STATE OF CALIFORNIA; COUNTY
17 OF SAN BERNARDINO; ISAIAH
KEE; MICHAEL BLACWOOD;
18 BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
19 and DOES 1-10 inclusive,

20 Defendants.

CASE NO. 5:23-cv-00257-JGB-SHK

*Assigned for All Purposes to:
Hon. Kenly Kiya Kato—Courtroom #3*

**SECOND STIPULATION TO
MODIFY SCHEDULING ORDER –
PRETRIAL CONFERENCE AND
TRIAL DATE ONLY**

Complaint filed: February 16, 2023

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1 Under Federal Rule of Civil Procedure 16(b)(4) and Local Rules 7-1 and 16-
 2 14, Plaintiffs Jonathan Wayne Botten Sr., Tanja Dudek-Botten, Annabelle Botten,
 3 and J.B., a minor by and through his guardian *ad litem* Jonathan Wayne Botten Sr.
 4 (“Plaintiffs”) and Defendants Michael Blackwood, Isaiah Kee, and Bernardo
 5 Rubalcava (“State Defendants”), County of San Bernardino, Robert Vaccari, and
 6 Jake Adams (“County Defendants”) (collectively “Defendants”), stipulate for the
 7 purpose of jointly requesting that the honorable Court modify the Scheduling Order
 8 as to the Pretrial Conference and Trial date only, recently issued in this action. (Dkt.
 9 No. 72). The parties seek to continue the final Pretrial Conference and Trial date by
 10 four weeks as lead Counsel for County Defendants will be out of the Country during
 11 the scheduled trial date with pre-paid tickets and lead Counsel for Plaintiff has back-
 12 to-back trials scheduled and his earliest availability is July 28, 2025. The current
 13 Pretrial Conference and Trial dates were not chosen or suggested by the parties in
 14 their last stipulation (Dkt. No. 71), therefore, the conflict could not have been
 15 anticipated or avoided.

16 When an act must be done within a specified time, the court may, for good
 17 cause, extend the time with or without motion or notice if the court acts, or if a
 18 request is made, before the original time expires. Fed. R. Civ. P. 6(b)(1)(A). A
 19 scheduling order may be modified only upon a showing of good cause and by leave
 20 of Court. *Id.* 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
 21 604, 609 (9th Cir. 1992) (describing the factors a court should consider in ruling on
 22 such a motion). In considering whether a party moving for a schedule modification
 23 has good cause, the Court primarily focuses on the diligence of the party seeking the
 24 modification. *Johnson*, 975 F.2d at 609 (citing Fed. R. Civ. P. 16 advisory
 25 committee’s notes of 1983 amendment). “The district court may modify the pretrial
 26 schedule ‘if it cannot reasonably be met despite the diligence of the party seeking
 27 the amendment.’” *Id.* (quoting Fed. R. Civ. P. 16 advisory committee notes of 1983
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1 amendment). Good cause exists to modify the Scheduling Order because Counsel
2 for both County Defendants and Plaintiffs will be unavailable during the current
3 scheduled Trial date.

4 1. On February 16, 2023, Plaintiffs filed their Complaint. (Dkt. No. 1).
5 2. On June 8, 2023, Plaintiffs filed a First Amended Complaint, the
6 operative complaint and the respective Defendants filed their Answers on September
7 12, 2023. (Dkt. Nos. 27, 52, and 53).

8 3. On December 21, 2023, the parties filed their Joint Rule 16(f) Report.
9 (Dkt. No. 55).

10 4. On February 14, 2024, the instant case was deemed related to another
11 case, 5:22-cv-00949-KK-SHK, L.C., et al. v. State of California, et al. (“Puga”) and
12 assigned from the Judge Jesus G. Bernal to Judge Kenly Kiya Kato. (Dkt. No. 58).

13 5. On February 28, 2024, the Court issued a Civil Trial Scheduling Order.
14 (Dkt. No. 60).

15 6. On April 9, 2024, the Court ordered that the instant Botten matter and
16 the related Puga matter be consolidated for the limited purpose of discovery. (Dkt.
17 No. 69). However, no dates and deadlines were changed in either case.

18 7. On June 18, 2024, pursuant to the parties’ requested stipulation, the
19 Court ordered that the Scheduling Order be modified so that all discovery dates in
20 the instant Botten matter and the related Puga were uniform. The Court also
21 selected new Pretrial and Trial dates; however, the dates ordered by the Court were
22 not dates chosen or suggested by the parties in their last stipulation (Dkt. No. 71),
23 and therefore, the scheduling conflict could not have been anticipated or avoided.
24 (Dkt. No. 72).

25 8. The parties agree that it is in the best interest of all parties to continue
26 only the final Pretrial Conference and Trial date for four weeks.
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1 9. This Stipulation is the parties' second request to modify the Scheduling
 2 Order.

3 10. Accordingly, in light of the foregoing, the parties hereby stipulate that
 4 good cause exists, and jointly request that the Court modify the Scheduling Order as
 5 outlined below.¹:

Case Management Event	Prior Date/Deadline	Proposed New Date/Deadline
Final Pretrial Conference (Thursday at 10:30 a.m.) (18 days before trial)	June 12, 2025	July 10, 2025
Jury Trial (Monday at 8:30 a.m.)	June 30, 2025	July 28, 2025

14 **IT IS SO STIPULATED.**

16 DATED: July 2, 2024

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19 By: */s/ Amy R. Margolies*
 20 SHANNON L. GUSTAFSON
 21 AMY R. MARGOLIES
 22 ANITA K. CLARKE
 23 Attorneys for Defendant,
 24 COUNTY OF SAN BERNARDINO
 25 ROBERT VACCARI, and JAKE ADAMS

26 ¹ The deadlines have been modified to adhere to this Court's most recent Civil
 27 Standing Order, Order Setting Scheduling Conference, and Civil Trial Scheduling
 28 Order, issued on June 18, 2024. (Dkt. No. 72).

1 DATED: July 2, 2024

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LAW OFFICES OF DALE K. GALIPO

By /s/ Hang D. Le
Dale K. Galipo
Hang D. Le
Attorneys for Plaintiffs

DATED: July 2, 2024

ROB BONTA
Attorney General of California
CHRISTINE E. GARSKE
Supervising Deputy Attorney General

/s/ Diana Esquivel

DIANA ESQUIVEL
Deputy Attorney General
Attorneys for Defendants Blackwood, Kee, and
Rubalcava

*The filer, Amy R. Margolies, hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur with the filing's content, and have authorized.

DATED: July 3, 2024

LYNBERG & WATKINS
A Professional Corporation

By: /s/ Amy R. Margolies

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